



**WISCONSIN SUPREME COURT
WEDNESDAY, JANUARY 11, 2006
1:30 p.m.**

04AP2481-CR

State v. Mark D. Jensen

This case bypassed the Court of Appeals. It began in Kenosha County Circuit Court, Judge Bruce E. Schroeder presiding.

This case stems from a Kenosha County homicide investigation. The question before the Supreme Court is whether a voice mail message and a letter that the victim left behind, and that implicate the defendant, were properly barred from evidence.

Here is the background: On Dec. 3, 1998, Julie Jensen – a 42-year-old mother of two – was found dead in her Pleasant Prairie home. The cause was poisoning by ethylene glycol (a chemical found in antifreeze).

Shortly before her death, Julie told a next-door neighbor and her son's third-grade teacher that she suspected her husband, Mark Jensen, was trying to poison her. She left a letter with the neighbor and instructed that it be given to the police in the event of her death. The letter, which Julie signed, revealed Julie's suspicions about Mark and contained a photograph of a list that she had found in her husband's daily planner. "I don't know what it means," she wrote, "but if anything happens to me, he would be my first suspect."

Mark was arrested and charged with first-degree intentional homicide. The admissibility of Julie's letter and her statements to various people became an issue. The court ultimately ruled that some of Julie's oral statements would be admitted but that a voice mail message that she left for a police officer and the letter that was delivered following her death were inadmissible.

The trial court's decision to bar this evidence was based upon a decision of the U.S. Supreme Court in a Washington state case called Crawford v. Washington¹. That case, like this one, involved a question of the admissibility of a recorded statement from a victim. The Supreme Court held that a defendant's Sixth Amendment right to confront his/her accusers is violated by the admission of this type of testimony (called testimonial evidence). That case, however, did not provide a clear definition of what constitutes testimonial evidence and – according to documents filed in the Wisconsin Supreme Court – widespread confusion and uncertainty have resulted in state trial courts.

The decision of the trial court to admit certain statements and bar others sent both the prosecution and the defense to appellate courts. The State asked the Supreme Court to permit this case to bypass the Court of Appeals, and the Supreme Court granted the petition.

The Supreme Court is expected to clarify what constitutes testimonial evidence.

¹ Crawford v. Washington, 124 S. Ct. 1354